



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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July 28, 2023

*Filed via CM/ECF*

David J. Smith  
Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Re: Second Rule 28(j) Citation of Supplemental Authority in Support of  
Petitioners' Joint Motion for Stay in *Alabama, et al. v. U.S. EPA*, Case  
No. 23-11173

Dear Mr. Smith:

On July 27, 2023, the Tenth Circuit entered judicial stays of EPA's disapprovals of each of the State Implementation Plans ("SIPs") submitted by Oklahoma and Utah. The court's order is attached.

Petitioners submit the Tenth Circuit's order as additional supplemental authority in support of their Stay Motion, in which Petitioners explained the Fifth, Eighth, and Ninth Circuits have granted judicial stays of EPA's disapprovals of SIPs for Texas, Louisiana, Mississippi, Missouri, Arkansas, Minnesota, and Nevada. Doc. 18 at 7 n.4; Doc. 27 at 1 n.1. Earlier this week, Petitioners filed a Rule 28(j) Citation of Supplemental Authority notifying this Court that, on July 25<sup>th</sup>, the Sixth Circuit entered a judicial stay of EPA's disapproval of Kentucky's SIP. The Tenth Circuit now joins the four other circuits in granting a judicial stay.

After deciding to carry the issue of venue with the case, the Tenth Circuit found that the Petitioners satisfied their burdens as to each of the factors required for a stay and ruled that EPA may not enforce its federal Good Neighbor plan for the 2015 Ozone NAAQS against Oklahoma or Utah while the stay remains in place. This holding aligns with arguments presented by Petitioners, and Petitioners are likely to succeed on the merits for similar reasons. *See* Doc. 18 at 10-18.

Petitioners request this Court take into consideration the Tenth Circuit's Order for the reasons set forth herein and grant their Stay Motion prior to the effective date of EPA's Federal Implementation Plan for Alabama on August 4<sup>th</sup>.

Respectfully submitted,

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ Robert D. Tambling  
Robert D. Tambling (TAM001)  
*Assistant Attorney General*

/s/ Lindsay S. Dawson  
Lindsay S. Dawson (DAW017)  
*Assistant Attorney General*

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel states that this letter complies with Fed. R. App. P. 28(j) because the body of the letter does not exceed 350 words.

**Dated: July 28, 2023**

/s/ C. Grady Moore III  
C. Grady Moore III  
*Counsel for Alabama Power Company and  
PowerSouth Energy Cooperative*

/s/ Robert D. Tambling  
Robert D. Tambling (TAM001)  
*Assistant Attorney General*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of July 2023, I have filed the foregoing letter using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ C. Grady Moore III

C. Grady Moore III

*Counsel for Alabama Power Company and  
PowerSouth Energy Cooperative*

/s/ Robert D. Tambling

Robert D. Tambling (TAM001)

*Assistant Attorney General*

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**July 27, 2023**

**Christopher M. Wolpert  
Clerk of Court**

STATE OF UTAH, by and through its  
Governor, Spencer J. Cox, and its Attorney  
General, Sean D. Reyes,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; MICHAEL S.  
REGAN, Administrator, United States  
Environmental Protection Agency,

Respondents.

PACIFICORP; DESERET GENERATION  
& TRANSMISSION CO-OPERATIVE;  
UTAH MUNICIPAL POWER AGENCY,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; MICHAEL S.  
REGAN, Administrator, United States  
Environmental Protection Agency,

Respondents.

UTAH ASSOCIATED MUNICIPAL  
POWER SYSTEMS,

Petitioner,

No. 23-9509

(EPA No. EPA-R08-OAR-2022-315)  
(Environmental Protection Agency)

No. 23-9512

(EPA No. EPA-R08-OAR-2022-315)  
(Environmental Protection Agency)

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; MICHAEL S.  
REGAN, Administrator, United States  
Environmental Protection Agency,

Respondents.

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STATE OF OKLAHOMA, by and through  
its Attorney General; GENTNER F  
DRUMMOND; OKLAHOMA  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY; MICHAEL S. REGAN,  
Administrator, United States  
Environmental Protection Agency,

Respondents.

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OKLAHOMA GAS & ELECTRIC  
COMPANY,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; MICHAEL S.  
REGAN, Administrator, United States  
Environmental Protection Agency,

No. 23-9520

(EPA No. EPA-R08-OAR-2022-315)  
(Environmental Protection Agency)

No. 23-9514

(EPA No. EPA-RO6-OAR-2021-0801)  
(Environmental Protection Agency)

No. 23-9521

(EPA No. EPA-HQ-OAR-2021-0663)  
(Environmental Protection Agency)



Respondents.

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TULSA CEMENT LLC, d/b/a Central  
Plains Cement Company LLC; REPUBLIC  
PAPERBOARD COMPANY LLC,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; MICHAEL S.  
REGAN, Administrator, United States  
Environmental Protection Agency,

Respondent.

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WESTERN FARMERS ELECTRIC  
COOPERATIVE,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; MICHAEL S.  
REGAN, Administrator, United States  
Environmental Protection Agency,

Respondents.

No. 23-9533  
(EPA No. EPA-HQ-OAR-2021-0663)  
(Environmental Protection Agency)

No. 23-9534  
(EPA No. EPA-HQ-OAR-2021-0663)  
(Environmental Protection Agency)

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**ORDER**

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Before **TYMKOVICH** and **CARSON**, Circuit Judges.

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Petitioners have filed motions to stay EPA’s final disapproval of Oklahoma’s and Utah’s respective state implementation plans regarding their Good Neighbor obligations under the 2015 ozone NAAQS. EPA has responded and petitioners have replied.

In deciding whether to grant a stay pending these petitions for review, we consider the traditional factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks omitted).

We conclude petitioners have satisfied their burden as to each of these factors. We therefore stay EPA’s final disapproval of Oklahoma’s and Utah’s respective Good Neighbor state implementation plans for the 2015 ozone NAAQS. This stay will remain in place until the disposition of these petitions for review on their merits, or until further order of this court. Because EPA may not enforce a federal implementation plan without first disapproving a state implementation plan, EPA may not enforce its federal Good Neighbor plan for the 2015 ozone NAAQS against Oklahoma or Utah while the stay remains in place.

Entered for the Court

A handwritten signature in black ink, appearing to read 'Chris Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk